

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES ALLEN HEINLE,

Petitioner,

v.

Case No. 05-CV-71677-DT

PERCY CONERLY,

Respondent.

**ORDER GRANTING PETITIONER'S MOTION FOR CONSIDERATION OF
SUPPLEMENTAL MEMORANDUM BUT DENYING REQUEST FOR
RECONSIDERATION OF DISMISSAL**

This matter is before the court on Petitioner's "Motion for Consideration of Supplemental Memorandum of Law in Support of Petition for Writ of Habeas Corpus" and his "Supplemental Memorandum of Law in Support of Petition for Writ of Habeas Corpus." Petitioner essentially seeks reconsideration of the court's non-prejudicial dismissal of his habeas corpus petition for failure to fully exhaust his state court remedies. In his pleadings, Petitioner asserts that his pursuit of state court remedies will be futile because he raised his unexhausted claims before the Michigan Supreme Court as new issues on direct appeal and that court denied leave to appeal.

A motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *See Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). Petitioner has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a

different disposition must result from a correction thereof, as required by Local Rule 7.1(g)(3). As noted in the court's dismissal order, Petitioner's inclusion of his unexhausted claims in his application for leave to appeal to the Michigan Supreme Court does not satisfy the exhaustion requirement. See *Castille v. Peoples*, 489 U.S. 346, 349 (1989) (submission of claims to state's highest court on discretionary review does not constitute "fair presentation" when such review is granted only upon "special and important reasons"). Further, the Michigan Supreme Court did not rule on the substance of Petitioner's newly-presented claims in denying leave to appeal. Petitioner has therefore not established that proceeding on a motion for relief from judgment in the state courts will be futile.

Accordingly, IT IS ORDERED that Petitioner's motion for consideration of his supplemental memorandum [Dkt. # 4] is GRANTED, but his request for reconsideration of the court's dismissal order [Dkt. # 5] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 10, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 10, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets
Case Manager and Deputy Clerk
(313) 234-5522